



6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2011-0469; FRL-9498-7]

**Approval and Promulgation of Air Quality Implementation Plans;
West Virginia and Ohio; Determinations of Attainment of the 1997 Annual Fine Particle
Standard for the Parkersburg-Marietta and Wheeling Nonattainment Areas**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making determinations that the Parkersburg-Marietta, West Virginia-Ohio (WV-OH) fine particle (PM_{2.5}) nonattainment area and the Wheeling, WV-OH PM_{2.5} nonattainment area (hereafter referred to as “Areas”) have attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by their applicable attainment date of April 5, 2010. These determinations are based upon complete, quality-assured, and certified ambient air monitoring data for the 2007-2009 monitoring period. EPA is finding these Areas to be in attainment, in accordance with the requirements of the Clean Air Act (CAA).

DATES: Effective Date: This final rule is effective on [insert date 30 days from date of publication].

ADDRESSES: EPA has established a docket for this action under Docket ID Number **EPA-R03-OAR-2011-0469**. All documents in the docket are listed in the www.regulations.gov website. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are

available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Region 3, Irene Shandruk, Office of Air Program Planning (3AP30), Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, PA 19103-2029, (215) 814-2166, shandruk.irene@epa.gov. Region 5, Carolyn Persoon, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-8290, persoon.carolyn@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On July 18, 1997 (62 FR 36852), EPA established a health-based PM_{2.5} NAAQS at 15.0 micrograms per cubic meter (µg/m³) based on a 3-year average of annual mean PM_{2.5} concentrations (hereafter referred to as “the annual PM_{2.5} NAAQS” or “the annual standard”). At that time, EPA also established a 24-hour standard of 65 µg/m³ (the “1997 24-hour standard”). *See*, 40 CFR 50.7. On January 5, 2005 (70 FR 944), EPA published its air quality designations and classifications for the 1997 PM_{2.5} NAAQS based upon air quality monitoring data from those monitors for calendar years 2001-2003. These designations became effective on April 5, 2005. The Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas were designated nonattainment for the 1997 PM_{2.5} NAAQS during this designations process. *See*, 40 CFR 81.349

(West Virginia) and 40 CFR 81.336 (Ohio). The Parkersburg-Marietta, WV-OH nonattainment area consists of Wood County, WV, the Grant Tax District of Pleasants County, WV, and Washington County, OH. The Wheeling, WV-OH nonattainment area consists of Marshall County, WV, Ohio County, WV, and Belmont County, OH.

EPA previously issued determinations of attainment of the 1997 annual PM_{2.5} NAAQS for each of these Areas pursuant to 40 CFR 51.1004(c). These determinations were published in the Federal Register on November 20, 2009 (74 FR 60199) and remain in effect.

Under CAA section 179(c), EPA is required to make a determination that a nonattainment area has attained by its applicable attainment date, and publish that determination in the Federal Register. The determination of attainment is not equivalent to a redesignation, and the state must still meet the statutory requirements for redesignation in order for the Areas to be redesignated to attainment.

Complete, quality-assured, and certified PM_{2.5} air quality monitoring data recorded in the EPA Air Quality System (AQS) database for 2007-2009, show that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas attained the 1997 annual PM_{2.5} NAAQS by their applicable attainment date.

On July 21, 2011 (76 FR 43634), EPA published a notice of proposed rulemaking (NPR) for the States of West Virginia and Ohio. The NPR proposed to determine that the Parkersburg-

Marietta, WV-OH PM_{2.5} nonattainment area and the Wheeling, WV-OH PM_{2.5} nonattainment area have attained the 1997 annual PM_{2.5} NAAQS by the applicable attainment date of April 5, 2010. The proposal is based upon complete, quality-assured, and certified ambient air monitoring data for the 2007-2009 monitoring period and EPA's determinations are in accordance with EPA's PM_{2.5} Implementation Rule of April 25, 2007 (72 FR 20664). One comment was submitted on the July 21, 2011 NPR (76 FR 43634). A summary of the comment and EPA's response is provided in section III of this document.

II. What is EPA's Analysis of the Relevant Air Quality Data?

EPA has reviewed the ambient air monitoring data for PM_{2.5}, consistent with the requirements contained in 40 CFR part 50 and recorded in the data in the EPA AQS database for the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas for the monitoring period from 2007-2009. On the basis of that review, EPA is determining that the Areas attained the 1997 annual PM_{2.5} NAAQS by the applicable April 5, 2010 attainment date.

Under EPA regulations at 40 CFR 50.7, the annual primary and secondary PM_{2.5} standards are met when the annual arithmetic mean concentrations, as determined in accordance with 40 CFR part 50, appendix N, is less than or equal to 15.0 µg/m³, at all relevant monitoring sites. The values calculated in accordance with 40 CFR part 50, appendix N, are referred to as design values, and these values are used to determine if an area is attaining the PM_{2.5} NAAQS.

According to the PM_{2.5} implementation rule, the attainment date for these Areas is April 5, 2010

and the monitoring data from 2007-2009 is used to determine if the Areas attained by April 5, 2010.

Tables 1 shows the PM_{2.5} design values for each monitor in the Parkersburg-Marietta, WV-OH nonattainment area and the Wheeling, WV-OH nonattainment area, respectively, for the years 2007-2009. All 2007-2009 design values are below 15.0 µg/m³, and all monitors meet the data completeness requirements. Therefore, the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas attained the 1997 annual PM_{2.5} NAAQS by their attainment date.

Table 1. Annual PM_{2.5} Design Values for Parkersburg-Marietta, WV-OH and Wheeling, WV-OH Nonattainment Areas*

State	County	Monitor ID	Certified Annual Design Value 2007-2009 (µg/m ³)
Parkersburg-Marietta, WV-OH			
West Virginia	Wood County	541071002	13.7
	Grant Tax District of Pleasants County	No monitor	-
Ohio	Washington County	No monitor	-
Wheeling, WV-OH			
West Virginia	Marshall County	540511002	13.4
	Ohio County	540690010	13.2
Ohio	Belmont County	No monitor	-

* The data presented in Table 1 are available at <http://www.epa.gov/air/airtrends/values.html>.

III. Summary of Public Comment and EPA Response

Comment: A commenter expressed concern about implementing a new, revised standard for ozone and stated that the current 1997 8-hour ozone standard should be left in place.

Response: As stated in the notice of proposed rulemaking, this rulemaking concerns EPA's determinations that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas have attained the 1997 annual PM_{2.5} NAAQS. These determinations concern only whether these areas meet the 1997 annual PM_{2.5} standard, and do not relate to any other NAAQS. The commenter expressed an opinion as to whether the current NAAQS for ozone (the 1997 Ozone NAAQS) should be revised. Because the comment does not relate to EPA's proposed determination that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas have attained the 1997 annual PM_{2.5} NAAQS, it is not relevant to, and is beyond the scope of this rulemaking action.

IV. Final Action

EPA is finalizing the determinations that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH nonattainment areas have attained the 1997 annual PM_{2.5} standard by the applicable attainment date (April 5, 2010). These actions meet the requirement pursuant to section 179(c) of the CAA for EPA to make a determination as to whether the Areas attained the standard by the applicable attainment date of April 5, 2010.

Finalizing these actions does not constitute a redesignation of the Areas to attainment of the 1997 annual PM_{2.5} NAAQS under section 107(d)(3) of the CAA. Further, finalizing these determinations does not involve approving maintenance plans for the Areas as required under section 175A of the CAA, nor does it find that the Areas have met all other requirements for redesignation. The designation status of the Parkersburg-Marietta, WV-OH, and Wheeling, WV-

OH areas remains nonattainment for the 1997 annual PM_{2.5} NAAQS until such time as EPA determines that the Areas meet the CAA requirements for redesignation to attainment and EPA acts to redesignate the Parkersburg-Marietta, WV-OH, and Wheeling, WV-OH areas.

IV. Statutory and Executive Order Reviews

A. General Requirements

These actions merely make attainment determinations based on air quality data and does not impose any additional requirements. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C.

804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action pertaining to the determinations of attainment for the Parkersburg-Marietta, WV-OH and the Wheeling, WV-OH PM_{2.5} nonattainment areas may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 27, 2011

W. C. Early, Acting
Regional Administrator, Region 3.

Dated: October 18, 2011

Susan Hedman,
Regional Administrator, Region 5.

40 CFR Part 52 is amended as follows:

PART 52 - [AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart KK--Ohio

2. Section 52.1892 is amended by adding paragraph (d) to read as follows:

§ 52.1892 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA determined that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH fine particle (PM_{2.5}) nonattainment areas attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the areas' air quality as of the attainment date, whether the areas attained the standard. EPA also determined that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH PM_{2.5} nonattainment areas are not subject to the consequences of failing to attain pursuant to section 179(d).

Subpart XX--West Virginia

3. Section 52.2527 is amended by adding paragraph (d) to read as follows:

§ 52.2527 Determinations of attainment.

* * * * *

(d) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, EPA

determined that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH fine particle (PM_{2.5}) nonattainment areas attained the 1997 annual PM_{2.5} National Ambient Air Quality Standard (NAAQS) by the applicable attainment date of April 5, 2010. Therefore, EPA has met the requirement pursuant to CAA section 179(c) to determine, based on the areas' air quality as of the attainment date, whether the areas attained the standard. EPA also determined that the Parkersburg-Marietta, WV-OH and Wheeling, WV-OH PM_{2.5} nonattainment areas are not subject to the consequences of failing to attain pursuant to section 179(d).

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